

NOTICE OF FILING

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Details of Filing

Document Lodged:	Outline of Submissions
File Number:	NSD642/2021
File Title:	SOCIETE GENERALE (ABN 71 092 516 286) v FORUM FINANCE PTY LIMITED (ACN 152 301 172) & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 1/07/2021 2:55:54 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Federal Court of Australia
District Registry: NSW
Division: Commercial and Corporations

Societe Generale (ABN 71 092 516 286)

Applicant

Forum Finance Pty Limited (ACN 153 301 172)

First Respondent

AND

Basile Papadimitriou (also known as Bill Papas)

Second Respondent

Applicant's short outline of submissions

Introduction

1. The applicant (**SG**) seeks, principally, “freezing orders” against each of the respondents.
2. SG is a multinational investment bank and financial services company listed on the Euronext Paris stock exchange.
3. The second respondent is a director and the secretary, as well as the CEO and Managing Director, of the first respondent (**Forum Finance**)¹, as well as Iugis Pty Ltd (**Iugis**)². The second respondent operates a business whereby through his corporate entities:
 - (a) he supplies "waste digesters" (essentially a type of bin that converts solid food waste into liquid) to third parties;
 - (b) supplies finance, through Forum Finance to those third parties to obtain the “waste digesters”, thereby creating an obligation on the third party to pay Forum Finance for the “waste digester” it has received;
 - (c) sells that financial obligation to financial entities, including SG, such that Forum Finance receives money from SG.
4. Veolia Environmental Services (Australia) Pty Ltd (**Veolia**) is one third party that Iugis supplies, or has previously supplied, waste digesters to.

¹ "GT-1" is a current and historical ASIC extract of Forum Finance dated 28 June 2021.

² "GT-3" is a current and historical ASIC extract of Iugis Pty Ltd dated 29 June 2021

5. SG contends that Forum Finance has supplied various documents to SG (purportedly signed by Veolia) so as to cause SG to purchase receivables from Forum Finance, that never existed as they related to waste digesters never supplied to Veolia.
6. SG relies on the affidavit of Gregory Thong, SG's Head of Corporate Coverage – Australia & New Zealand dated 30 June 2021 and Gurpreet Brar, Veolia's Chief Financial Officer at the relevant times (and now CEO/Country Director of Veolia India), dated 1 July 2021.

Relevant Principles in respect of the making of a freezing order

7. In respect of the relevant principles for making a freezing order, in *Royal Express Pty Ltd (Receivers and Managers Appointed) (Administrator Appointed) v Huang, in the matter of Royal Express Pty Ltd* [2021] FCA 585 O'Bryan J made the following observations:

“[6] Before a freezing order is made, the plaintiff must show there is a reasonably arguable case on legal and factual matters or a sufficiently realistic prospect of success on the proceedings: *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 (*Cardile*) at [68]; *Re Donnelly*; *Hancock v Porteous* [2001] FCA 345 at [9].

...

[30] The plaintiff must also show that, unless the order is granted, there is a reasonable apprehension that assets will be dissipated so as to frustrate the action or execution: *Cardile* at [26], [41]-[42] (Gaudron, McHugh, Gummow and Callinan JJ); *Hyder Consulting (Victoria) Pty Ltd v Transfield Pty Ltd* [2002] VSC 315 at [15]-[16]. It is not essential for an applicant for freezing orders to demonstrate a positive intention on the part of the respondent to frustrate a judgment: *National Australia Bank Ltd v Bond Brewing Holdings Limited* (1990) 169 CLR 271 at 277 (Mason CJ, Brennan and Deane JJ); *Cardile* at [26]. Nor is it necessary for the applicant to demonstrate that the risk of dissipation is more probable than not: *Deputy Commissioner of Taxation v Hua Wang Bank Berhad* (2010) 273 ALR 194 at [8]-[10] (Kenny J); *Deputy Commissioner of Taxation v Chemical Trustee Ltd (No 4)* [2012] FCA 1064; 90 ATR 711 at [23] (Perram J). It is enough that the applicant establishes that, in the absence of relief, there is a danger or real risk that the assets will be dealt with in a way which would prevent the applicant from recovering judgment: *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft mbH UND CO KG* [1983] 1 WLR 1412 at 1422; *Beach Petroleum NL v Johnson* (1992) 9 ACSR 404, Von Doussa J at 405-406. As recently noted by Anderson J in *Spotlight Pty Ltd v Mehta* [2019] FCA 1796 (at [23]), “[w]here, as here, allegations made against the respondents contain allegations of serious dishonesty, evidence of that nature is capable of satisfying the Court of the existence of the requisite danger to dispose of, deal with or dissipate assets”.

8. An order may be made even though the danger of dissipation may be less than probable (see *Patterson v BTR Engineering (Aust) Ltd* (1989) 18 NSWLR 264 at 276).

Affidavits of Mr Thong and Ms Brar

9. The affidavits of Mr Thong and Ms Brar relevantly address both the issue of a reasonably arguable cause of action and the reasonable apprehension. They relevantly reveal the matters set out below.

Master Agreement

10. SG retains EQWE Pty Ltd (**EQWE**) to service the Receivables Acquisition and Servicing Agreement between SG and Forum Finance.³ In November 2020, SG, Forum Finance and EQWE entered into a Receivables Acquisition and Servicing Agreement (**Master Agreement**).⁴
11. In summary, the Master Agreement governs the commercial arrangement in which Forum Finance could sell, and SG could purchase, "Offered Receivables" that an "Obligor" (being Veolia or any other company or legal entity agreed by SG and Forum Finance) may from time to time owe to Forum Finance. Those receivables were derived from the supply of waste digesters.
12. The Master Agreement also appointed EQWE as agent of SG and Forum Finance to enforce their rights in and under the Accepted Receivables (clause 10.1), and included particular obligations on EQWE (in addition to the Servicing Guidelines) in respect of its role as the party servicing the arrangement between SG and Forum Finance including, for example, facilitating payments to be made by Forum Finance to SG and other matters.

Payments under the Contracts

13. On three occasions between 3 March and 18 May 2021, SG received an Offer Notice from Forum Finance identifying various matters concerning Veolia purportedly agreeing to be supplied waste digesters. On the first occasion, 3 March 2021 (**First Contract**), the purported total "product price" was for \$4,989,000 (plus GST)⁵. On the second occasion, 3 May 2021 (**Second Contract**), the purported total "product price" was for \$2,779,920 (plus

³ See "GT-5", being a copy of the EQWE Specific Servicing Guidelines entered into between SG and EQWE.

⁴ Exhibited and marked "GT-6"

⁵ "GT-7" is a copy of an email from EQWE to SG attaching the First Offer Notice and related documents.

GST)⁶. On the third occasion, 18 May 2021 (**Third Contract**), the purported total “product price” was for \$3,100,680 (plus GST)⁷.

14. On each occasion, in support of the Offer Notice, Forum Finance supplied various documents. Those documents included a Verification Statement for a registration made by Forum Finance against Veolia on the Personal Property Securities Register in respect of the goods⁸ as well as a Notice of Assignment purportedly issued by Forum Finance to Veolia, Payment Schedules and Certificates of Delivery. Those documents were first emailed by the second respondent or his executive assistant (with the second respondent copied) to EQWE,⁹ and EQWE then emailed the documents to SG.
15. Each document requiring a signature for and on behalf of:
 - (a) Forum Finance was signed by the second respondent;
 - (b) Veolia was purportedly signed by Ms Brar.
16. On each occasion, in reliance on the documents being put forward by Forum Finance, SG accepted the Offer Notice and paid to Forum Finance:
 - (a) \$4,128,757¹⁰ on 9 March 2021 in respect of the First Contract;¹¹
 - (b) \$2,299,539¹² on 6 May 2021 in respect of the Second Contract¹³;
 - (c) \$2,558,902¹⁴ on 24 May 2021 in respect of the Third Contract¹⁵.

⁶ "GT-11" is a copy of an email from EQWE to SG dated 3 May 2021 attaching the Second Offer Notice and related documents.

⁷ "GT-15" is a copy of an email from EQWE to SG dated 18 May 2021 attaching the Third Offer Notice.

⁸ See "GT-9", being an email from EQWE to SG dated 9 March 2021 attaching that Verification Statement.

⁹ See "GT-10A" in respect of the First Contract, "GT-14A" in respect of the Second Contract, and "GT-18A" in respect of the Third Contract

¹⁰ This is \$4,313,510 (being the "Discounted Amount" of the "Offered Receivables" under the First Offer Notice that was due to be paid in accordance with clauses 2.1(e) of the Master Agreement (and as stated in the First Offer Notice) less the sum of \$184,753, being the "Receivable Retention Amount" that SG was entitled to retain in accordance with clause 2.1(i) of the Master Agreement (and as also stated in the First Offer Notice).

¹¹ "GT-8": an email exchange involving SG, SG's bankers (Commonwealth Bank of Australia) and EQWE confirming the payment and requesting the Notice of Assignment.

¹² This is the sum of \$2,402,461, being the "Discounted Amount" of the "Offered Receivables" under the Second Offer Notice that was due to be paid in accordance with clauses 2.1(e) of the Master Agreement (and as stated in the Second Offer Notice) less the sum of \$102,922, being the "Receivable Retention Amount" that SG was entitled to retain in accordance with clause 2.1(i) of the Master Agreement (and as also stated in the Second Offer Notice).

¹³ "GT-12" is a copy of an email sent from SG to EQWE at 5:33pm on 6 May 2021 confirming payment.

¹⁴ This is the sum of \$2,673,428, being the "Discounted Amount" of the "Offered Receivables" under the Third Offer Notice that was due to be paid in accordance with clauses 2.1(e) of the Master Agreement (and as stated in the Third Offer Notice) less the sum of \$114,526, being the "Receivable Retention Amount" that SG was entitled to retain in accordance with clause 2.1(i) of the Master Agreement (and as also stated in the Third Offer Notice).

¹⁵ "GT-18" is a copy of an email sent from SG to EQWE at 5:33pm on 24 May 2021 confirming payment

Issues Arising

17. It recently came to SG's attention (via EQWE) that Westpac Banking Corporation (**Westpac**) had concerns regarding finance it had provided to Forum Finance, including whether it was the subject of a fraud by Forum Finance and the second respondent. As a result of those concerns being raised, SG (including through EQWE) carried out its own investigations in respect of the finance it had supplied to Forum Finance under the Master Agreement in respect of each of the First, Second and Third Contracts.
18. Those investigations revealed:
- (a) Westpac suspected there may be a level of fraud by the second respondent in respect to some contracts that Westpac had funded (see [39] of Mr Thong's Affidavit and "**GT-20**");
 - (b) The second respondent was not contactable (see [39] of Mr Thong's Affidavit);
 - (c) EQWE had been informed by Craig Rollinson, a representative of Forum Finance that (see [51] of Mr Thong's Affidavit):
 - i. Forum Finance had engaged lawyers who were going to send a letter inviting EQWE, Westpac and SG to attend Forum's offices on 28 June 2021 to undertake a review of Forum's files and documentation;
 - ii. the second respondent was believed to be overseas, perhaps in Greece;
 - (d) the signatures put forward as being those of Ms Brar on behalf of Veolia were not Ms Brar's signatures (see [46]-[47], [49] of Mr Thong's Affidavit and "**GT-23**");
 - (e) the documents had never been seen by Ms Brar or anyone in the Veolia legal team (see "**GT-23**");
 - (f) Veolia had sent an email advising that the serial numbers contained in the 3 Payment Schedules do not correlate to the serial numbers Veolia had in service (see "**GT-26**");
 - (g) EQWE had dealt with Mr Rollinson on 28 June 2021 and that as a result of that had been informed that Mr Rollinson was "*parachuted into the "Forum CEO" role on the 18th when Bill disappeared*", and that Mr Rollinson had indicated that "*there are clearly issues with the contracts sold and underlying contracts with the Customers*" (see "**GT-24**").
19. Ms Brar has confirmed the matters set out above in respect of: (a) her signatures; (b) whether she had ever seen the documents previously; and (c) whether Veolia had ever acquired the goods purported to be supplied (see [11] and [13] of Ms Brar's Affidavit).

20. On 28 June 2021, Westpac obtained, on an interim basis, freezing orders against each of Forum Finance and the second respondent from the Federal Court of Australia, a copy of which was then served on SG. Those freezing orders were for an amount of \$254,500,000. The application brought by Westpac was stood over to 2 July 2021.

Summary of Argument

21. SG has a reasonably arguable case as set out in the Concise Statement. That claim includes claims for damages against Forum Finance and the second respondent pursuant to section 236 of the *Australian Consumer Law* for contravening section 18 of the *Australian Consumer Law*, and the tort of deceit (i.e. common law fraud).
22. There can be little doubt that SG’s case is reasonably arguable in circumstances where:
- (a) Forum Finance has acknowledged that there are “issues” with respect to the dealings between it and SG;
 - (b) the evidence of Ms Brar as to both her signature on the documents and whether Veolia has received the waste digesters; and
 - (c) the second respondent was actively involved in the preparation (including himself signing) and disseminating the fraudulent documents.
23. Indeed, in light of Ms Brar’s evidence SG’s case is *prima facie* strong, which militates in favour of making a freezing order.
24. SG alleges, and the evidence seemingly supports it, that the respondents have engaged in fraud or other serious wrongdoing in the context of SG’s claim. As recently noted by Anderson J in *Spotlight Pty Ltd v Mehta* [2019] FCA 1796 (at [23]), “[w]here, as here, allegations made against the respondents contain allegations of serious dishonesty, evidence of that nature is capable of satisfying the Court of the existence of the requisite danger to dispose of, deal with or dissipate assets”.
25. The serious wrongdoing is complex in its nature, and could only have come with a concerted effort. It involved the provision by the respondents of a series of documents, signed by the second respondent, that suggested:
- (a) certain receivables were owing by Veolia to Forum Finance;
 - (b) signatures of the Veolia executive were made by the person whose name appears under them;
 - (c) goods that were the subject of the purported receivables were acquired or received by Veolia; and

- (d) making initial instalment payments under the First and Second Offer Notices, so as to conceal the initial frauds, until money was advanced under all three Offer Notices.
26. The respondents provided those documents to SG for the sole purpose of obtaining money. The respondents engaged in such conduct over a period of some months, on more than one occasion and on each occasion for a considerable sum of money. It is hard to imagine any plausible defence.
27. The respondents have also seemingly engaged in improper conduct in the context of Westpac's claim, which has been established to the sufficient degree required by the Federal Court when it made freezing orders against the respondents. The claims by Westpac are for even greater sums of money.
28. Forum Finance's refusal to identify where the second respondent is located also supports the conclusion that there is a danger or real risk that the assets will be dealt with in a way which would prevent SG from recovering judgment. Any suggestion by Forum Finance that it is unable to provide such information lacks plausibility given the second respondent is a director and secretary of Forum Finance, as well as the CEO and Managing Director and, yet, the business continues to operate. Indeed, the evidence is that Forum Finance was in contact with Mr Papas as recently as 28 June 2021 (see [54(b)] of Mr Thong's affidavit).

Undertaking as to damages

29. SG is a multinational investment bank and financial services company listed on the Euronext Paris stock exchange with the ticker GLE. It is prepared to give the usual undertaking that is included in Schedule A of the orders that form Annexure A and Annexure B to the Originating Application.

1 July 2021



Sinclair Gray
sinclairgray@12thfloor.com.au

Counsel for the Applicants
0416 183 769